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In re Application of	:	
GRUENEWAELDER et al.	:	
U.S. Application No.: 10/798,162	:	DECISION ON PETITION
Filing Date: 16 June 2004	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: 01107.00482	:	
For: PHOSPHATE ASSOCIATED WITH	:	
METASTASIS	:	

This decision is in response to applicant's "Resubmission of Petition to Revive Abandoned International Application" which is being treated as a Petition under 37 CFR 1.181 and a Petition to Revive under CFR 1.137(b) filed 01 November 2004 in the above-captioned application. The petition fee under 37 CFR 1.17(m) has been charged to Deposit Account no. 04-0088.

BACKGROUND

On 13 August 2002, applicant filed international application PCT/EP02/09049 which claimed a priority date of 16 August 2001. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the international filing date, 09 February 2004.

On 11 March 2004, applicant filed a specification, drawings, unexecuted declaration and a itemized postcard receipt.

On 01 November 2004, applicant filed "Resubmission of Petition to Revive Abandoned International Application" which included a copy of the Petition to Revive under 37 CFR 1.137(b) and a postcard receipt.

DISCUSSION

A. Petition under 37 CFR 1.181

Applicant states in their present petition that a Petition to Revive under CFR 1.137(b) was received at the United States Patent and Trademark Office on 11 March 2004. A review of the present application reveals that the Petition to Revive under CFR 1.137(b) is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicant, title of invention, and attorney docket number. The receipt itemizes, among other things, a Petition to Revive. The receipt is stamped by the United States Patent and Trademark Office across its face is sufficient to indicate that the above items were in fact received in the Office on 11 March 2004.

B. Petition to Revive under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

Regarding item (1), applicant has supplied the proper reply in the form of the filing of a continuation application.

As to item (2), the petition fee has been submitted.

With regard to Item (3), applicant's statement that "entire delay in filing the 35 U.S.C. 371(c) requirement from their due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

CONCLUSION

Applicant's petition to revive for the purposes of continuity only is GRANTED.

International application PCT/EP02/09049 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned.



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